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FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**Capital Habeas Unit**

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June 26, 2008

Honorable Sue L. Robinson  
United States District Judge  
United States Courthouse  
844 King Street  
Wilmington, DE 19801  
**Electronically filed**

Re: Jackson v. Danberg, 06-cv-300

Your Honor:

We are writing to address a number of matters.

1. We wish to advise the Court that we request that the Court examine two of Plaintiffs' expert witnesses: anesthesiologist Dr. Mark Heath, and Professor John Senders, who is an expert in human factors. Professor Senders can offer testimony about risks raised by some of the differences between the two protocols.

2. We also take this opportunity to question the Defendants' suggestion that former Warden Carroll be made available for the Court's questioning during this phase of the trial. Mr. Carroll is not to our knowledge an expert, and therefore his

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testimony would appear to be beyond the scope of what we understood to be the Court's desire to question experts about differences in the two protocols. Although we do not necessarily have an objection to his potential testimony, we believe that if the Defendants offer him for examination, they ought to be required to make a proffer about the areas he will cover. To the extent that he would supplement or interpret the terms of the protocol, or testify about how the protocol should be administered, we believe he would be opening a door to matters that the Court previously held were irrelevant, or on which the Court has yet to rule (i.e. whether Plaintiffs will be permitted to present evidence about past executions). We would not necessarily oppose such testimony, but we do not want to be in a position of having Mr. Carroll testify about these subjects without being able to rebut with our own evidence. And, as we have made clear, such evidence would include testimony about prior executions.

3. In their June 24 letter Defendants provided a number of citations to the current protocol, which they contend clarify that the Warden is in charge. These citations raise more questions than they answer and provide additional evidence of the lack of clarity in the protocol and/or Defendants' chronic inability to follow it.

On Bate-stamped pages 2447-49 Defendants cite subsection "g" which states

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that the Warden “supervise[s], manage[s] and direct[s] activities of the execution. . .” Although every prior protocol contained an identical assignment of responsibility to the Warden, *see* Bate-stamped pages 0002 (protocol dated 3/11/92) (“The assigned Warden of the Delaware Correctional Center who is the Commissioner’s designee **in charge of the execution.**”) (emphasis added); 00131 (protocol dated 2/26/93 (same); 00206 (protocol dated 9/29/95) (same); 00280 (same) (protocol dated 3/1/99) (same); 00346 (protocol dated 10/11/00) (same); and 00409 (protocol dated 8/1/05) (same) (attached), Plaintiffs have nonetheless identified rampant confusion about who makes critical medical-related decisions. Rather than clarifying who is “in charge,” Defendants’ citations only reinforce that those involved in the execution process chronically fail to follow even the most basic terms of the protocol. Moreover, saying that the Warden is “in charge” still begs the question about who is making the medical-related decisions which are of course the most problematic and prone to error.

Defendants also cite Bate-stamped page 2444 for the proposition that the Warden “carries out” the execution under the “supervision” of the Commissioner. Yet, nowhere else in the protocol is there any explanation of how the Commissioner supervises. As a practical example, if there is a question about whether the

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condemned prisoner is unconscious, does the Commissioner have a “supervisory” role in determining whether the second and third drugs are to be administered? Do the Warden and Commissioner have a say-so as to the location of peripheral IV access, in the event that the IV Team has difficulty siting the lines? Is the Warden obliged to consult with the Commissioner regarding such decisions? These unanswered questions render the protocol significantly different from Kentucky’s, thus rendering it violative of the Eighth Amendment.

4. We are in agreement with the Defendants’ suggestion contained, in their June 24 letter, that it would be appropriate for the Court to have available to it the discovery obtained by the parties.

We appreciate the Court’s consideration of our views.

Respectfully,

/s/ Michael Wiseman

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Michael Wiseman  
Helen Marino  
Maria Pulzetti  
Counsel for Plaintiffs

cc: Elizabeth McFarlan  
Gregory Smith  
Mark Niedzielski

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PROCEDURE	SECTION 'A'	PAGE 1 OF 25
DEPARTMENT OF CORRECTION BUREAU OF PRISONS	PROCEDURE NUMBER 110	
DELAWARE CORRECTIONAL CENTER	SUBJECT: EXECUTION PROCEDURE	
APPROVED BY WARDEN: <i>R. E. Snyder</i>		
EFFECTIVE DATE: 3-11-92		

- I. AUTHORITY: 11 Delaware Code; 4209(f)
- II. Purpose: To establish standardized procedures that staff shall use to carry out the mandate of an execution of an inmate sentenced to death.
- III. Applicability: All employees who are assigned responsibility and activity involving an execution of inmate subject to the death penalty.
- IV. Definitions:
  - A. ISDP: An "inmate subject to the death penalty."
  - B. Housing:
    1. Where an adult male or female inmate under sentence of death shall be housed in an appropriate security level at an institution until approximately thirty six (36) hours prior to the scheduled date and time of execution.
  - C. Execution Holding Cell:
    1. That cell or area that is reasonably isolated from general inmate population, and maintained upon the confines of the Delaware Correctional Center, for holding an inmate subject to the death penalty.
    2. An inmate's transfer to the execution holding cell shall normally be effected approximately thirty six (36) hours, but not less than twenty four (24) hours, prior to the scheduled time of execution.

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DEPARTMENT OF CORRECTION

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D. Execution Sites:

1. Lethal injection - At a specially equipped trailer that has been located inside the secured fence of Maximum Security Unit at the Delaware Correctional Center.
2. Hanging - At a gallows that is located adjacent to Prison Industries area, outside of the secured fence on southwest corner of the Delaware Correctional Center.

E. Death Watch: A period of time specified as no more than thirty six (36) hours prior to the scheduled execution of a condemned inmate. The inmate shall be constantly monitored and visually observed at all times by at least one (1) of two (2) assigned staff members during this period.

F. Warden: The assigned Warden of the Delaware Correctional Center who is the Commissioner's designee in charge of the execution.

V. Policy: It is the policy of the Department of Correction to ensure that an execution is carried out as mandated for an inmate subject to the death penalty. It is the intent to make the execution as easy as possible for both the inmate and persons tasked with carrying out the execution.

A. References:

1. Department of Correction Execution Procedure dated February 28, 1992.
2. 11 Delaware Code; 4209(F)
3. 24 Delaware Code; 1760.
4. 29 Delaware Code; 4706.

VI. Procedures: When an inmate has been sentenced to death and receives an execution date, the Department of Correction has the responsibility for executing that inmate. Standard procedures shall be used at the Delaware Correctional Center to carry out the execution mandate. The following activities will be completed by those designated personnel.

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PROCEDURE	SECTION	PAGE 1 OF 25
	'A'	
DEPARTMENT OF CORRECTION	PROCEDURE NUMBER	
BUREAU OF PRISONS	110	
DELAWARE CORRECTIONAL CENTER	SUBJECT: EXECUTION PROCEDURE	
APPROVED BY WARDEN		
<i>[Signature]</i>		
EFFECTIVE DATE:		
2-26-93		

- I. AUTHORITY: 11 Delaware Code; 4209(f)
- II. Purpose: To establish standardized procedures that staff shall use to carry out the mandate of an execution of an inmate sentenced to death.
- III. Applicability: All employees who are assigned responsibility and activity involving an execution of inmate subject to the death penalty.
- IV. Definitions:
- A. ISDP: An "inmate subject to the death penalty."
- B. Housing:
1. Where an adult male or female inmate under sentence of death shall be housed in an appropriate security level at an institution until approximately twenty-four (24) hours prior to the scheduled date and time of execution.
- C. Execution Holding Cell:
1. That cell or area that is reasonably isolated from general inmate population, and maintained upon the confines of the Delaware Correctional Center, for holding an inmate subject to the death penalty.
  2. An inmate's transfer to the execution holding cell shall normally be effected approximately twenty-four (24) hours prior to the scheduled time of execution.
- D. Execution Sites:
1. Lethal injection - At a specially equipped trailer that has been

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located inside the secured fence of Maximum Security Unit at the Delaware Correctional Center.

2. Hanging - At a gallows that is located adjacent to Prison Industries area, outside of the secured fence on southwest corner of the Delaware Correctional Center.

E. Death Watch: A period of time specified as twenty four (24) hours prior to the scheduled execution of a condemned inmate. The inmate shall be constantly monitored and visually observed at all times by at least one (1) of two (2) assigned staff members during this period.

F. Warden: The assigned Warden of the Delaware Correctional Center who is the Commissioner's designee in charge of the execution.

V. Policy: It is the policy of the Department of Correction to ensure that an execution is carried out as mandated for an inmate subject to the death penalty. It is the intent to make the execution as easy as possible for both the inmate and persons tasked with carrying out the execution.

A. References:

1. Department of Correction Execution Policy dated January 26, 1993.
2. Bureau of Prisons Execution Procedure dated February 1, 1993.
3. 11 Delaware Code; 4209(f)
4. 24 Delaware Code; 1760.
5. 29 Delaware Code; 4706.

VI. Procedures: When an inmate has been sentenced to death and receives an execution date, the Department of Correction has the responsibility for executing that inmate. Standard procedures shall be used at the Delaware Correctional Center to carry out the execution mandate. The following activities will be completed by those designated personnel.



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DELAWARE CORRECTIONAL CENTER	2.7	1 OF 25
MANUAL	SUBJECT: EXECUTION PROCEDURE	
CHAPTER: SECURITY:		
APPROVED BY WARDEN: <i>R. E. Smyth</i>		
EFFECTIVE DATE: <i>9-29-95</i>		

- I. AUTHORITY: 11 Delaware Code; 4209(f)
- II. Purpose: To establish standardized procedures that staff shall use to carry out the mandate of an execution of an inmate sentenced to death.
- III. Applicability: All employees who are assigned responsibility and activity involving an execution of inmate subject to the death penalty.

IV. Definitions:

A. ISDP: An "inmate subject to the death penalty."

B. Housing:

- Where an adult male or female inmate under sentence of death shall be housed in an appropriate security level at an institution until approximately twenty four (24) hours prior to the scheduled date and time of execution.

C. Execution Holding Cell:

- That cell or area that is reasonably isolated from general inmate population, and maintained upon the confines of the Delaware Correctional Center, for holding an inmate subject to the death penalty.
- An inmate's transfer to the execution holding cell shall normally be effected approximately twenty four (24) hours prior to the scheduled time of execution.

D. Execution Sites:

- Lethal injection - At a specially equipped trailer that has been

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located inside the secured fence of Maximum Security Unit at the Delaware Correctional Center.

2. Hanging - At a gallows that is located adjacent to Prison Industries area, outside of the secured fence on southwest corner of the Delaware Correctional Center.

E. Death Watch: A period of time specified as twenty-four (24) hours prior to the scheduled execution of a condemned inmate. The inmate shall be constantly monitored and visually observed at all times by at least one (1) of two (2) assigned staff members during this period.

F. Warden: The assigned Warden of the Delaware Correctional Center who is the Commissioner's designee in charge of the execution.

V. Policy: It is the policy of the Department of Correction to ensure that an execution is carried out as mandated for an inmate subject to the death penalty. It is the intent to make the execution as easy as possible for both the inmate and persons tasked with carrying out the execution.

A. References:

1. Department of Correction Execution Policy dated January 26, 1993.
2. Bureau of Prisons Execution Procedure dated February 1, 1993.
3. 11 Delaware Code; 4209(F)
3. 24 Delaware Code; 1760.
4. 29 Delaware Code; 4706.

VI. Procedures: When an inmate has been sentenced to death and receives an execution date, the Department of Correction has the responsibility for executing that inmate. Standard procedures shall be used at the Delaware Correctional Center to carry out the execution mandate. The following activities will be completed by those designated personnel.

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STATE OF DELAWARE DELAWARE CORRECTIONAL CENTER	PROCEDURE 2.7	PAGE NUMBER 1 OF 22
MANUAL		
CHAPTER: SECURITY:		
APPROVED BY WARDEN: <i>Robert E. Snyder</i>		
EFFECTIVE DATE: <i>March 1, 1999</i>		

I. AUTHORITY: 11 Delaware Code; 4209 (f)

II. PURPOSE: To establish standardized procedures that staff shall use to carry out the mandate of an execution of an inmate sentenced to death.

III. APPLICABILITY: All employees who are assigned responsibility and activity involving an execution of inmate sentenced to the death penalty.

IV. DEFINITIONS:

A. ISDP: An "inmate sentenced to the death penalty."

B. Housing:

1. Where an adult male or female inmate under sentence of death shall be housed in an appropriate security level at an institution until approximately 24 hours prior to the scheduled date and time of execution.

C. Execution Holding Cell:

1. That cell or area that is reasonably isolated from general inmate population and maintained upon the confines of the Delaware Correctional Center for holding an inmate sentenced to the death penalty.
2. An inmate's transfer to the execution holding cell shall normally be effected approximately 24 hours prior to the scheduled time of execution.

D. Execution Sites:

1. Lethal Injection - At a specially equipped trailer that has been located inside the secured fence of Maximum Security Unit at the Delaware Correctional Center.

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2. Hanging - At a gallows that is located adjacent to Prison Industries area, outside of the secured fence on southwest corner of the Delaware Correctional Center.

B. Death Watch: A period of time specified as 24 hours prior to the scheduled execution of a condemned inmate. The inmate shall be constantly monitored and visually observed at all times by at least one of two assigned staff members during this period.

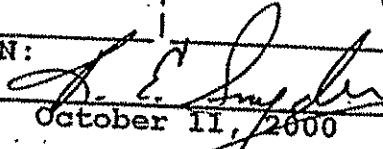
F. Warden: The assigned Warden of the Delaware Correctional Center who is the Commissioner's designee in charge of the execution.

V. POLICY: It is the policy of the Department of Correction to ensure that an execution is carried out as mandated for an inmate sentenced to the death penalty (ISDP). It is the intent to make the execution as easy as possible for both the inmate and persons tasked with carrying out the execution.

A. References:

1. Department of Correction Execution Policy dated January 26, 1993.
2. Bureau of Prisons Execution Procedure dated February 1, 1993.
3. 11 Delaware Code; 4209 (F).
4. 24 Delaware Code; 1760.
5. 29 Delaware Code; 4706.

VI. PROCEDURE: When an inmate has been sentenced to death and receives an execution date, the Department of Correction has the responsibility for executing that inmate. Standard procedures shall be used at the Delaware Correctional Center to carry out the execution mandate. The following activities will be completed by those designated personnel.

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MANUAL		
CHAPTER: SECURITY	SUBJECT: EXECUTION PROCEDURE CONFIDENTIAL	
APPROVED BY WARDEN:		
EFFECTIVE DATE:	October 11, 2000	

- I. AUTHORITY: 11 Delaware Code; 4209(f).
- II. PURPOSE: To establish standardized procedures that staff shall use to carry out the court mandated execution of an inmate sentenced to death.
- III. APPLICABILITY: All employees who are assigned responsibility and activity involving an execution of an inmate sentenced to the death penalty.
- IV. DEFINITIONS:
  - A. ISDP: An "inmate sentenced to the death penalty."
  - B. Housing: Where an adult male or female under sentence of death shall be housed in an appropriate security level at an institution as determined by the Warden.
  - C. Execution Holding Cell: That cell or area that is reasonably isolated from general inmate population and maintained upon the confines of the Delaware Correctional Center for holding an inmate sentenced to the death penalty.

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D. Execution Sites:

1. Lethal Injection - An area that is located inside the secured fence of the Delaware Correctional Center for this purpose.

2. Hanging - A gallows that is located adjacent to Prison Industries area, outside of the secured fence on southwest corner of the Delaware Correctional Center.

E. Death Watch: A period of time specified prior to the court-ordered execution of a condemned inmate in which the inmate shall be constantly monitored and visually observed at all times by at least one of two assigned staff members.

F. Warden: The assigned Warden of the Delaware Correctional Center who is the Commissioner's designee in charge of the execution.

V. POLICY: It is the policy of the Department of Correction to ensure that an execution is carried out as mandated for an inmate sentenced to the death penalty (ISDP). It is the intent to make the execution as easy as possible for both the inmate and persons tasked with carrying out the execution.

A. References:

1. Department of Correction Execution Policy dated January 26, 1993.

STATE OF DELAWARE DELAWARE CORR CENTER	PROCEDURE 2.7	PAGE NUMBER 1 OF 36
MANUAL		
CHAPTER: SECURITY	SUBJECT: EXECUTION PROCEDURE CONFIDENTIAL	
APPROVED BY WARDEN:	<i>Thomas L. Carolef</i>	
EFFECTIVE DATE:	8/1/05	

- I. AUTHORITY: 11 Delaware Code; 4209(f).
- II. PURPOSE: To establish standardized procedures that staff shall use to carry out the court mandated execution of an inmate sentenced to death.
- III. APPLICABILITY: All employees who are assigned responsibility and activity involving an execution of an inmate sentenced to the death penalty.
- IV. DEFINITIONS:
  - A. ISDP: An "inmate sentenced to the death penalty."
  - B. Housing: Where an adult male or female under sentence of death shall be housed in an appropriate security level at an institution as determined by the Warden.
  - C. Execution Holding Cell: That cell or area that is reasonably isolated from general inmate population and maintained upon the confines of the Delaware Correctional Center for holding an inmate sentenced to the death penalty.

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STATE OF DELAWARE DELAWARE CORR CENTER	PROCEDURE NUMBER 2.7	PAGE NUMBER 2 OF 36
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D. Execution Site: An area that is located inside the secured fence of the Delaware Correctional Center for this purpose.

E. Death Watch: A period of time specified prior to the court-ordered execution of a condemned inmate in which the inmate shall be constantly monitored and visually observed at all times by at least one of two assigned staff members.

F. Warden: The assigned Warden of the Delaware Correctional Center who is the Commissioner's designee in charge of the execution.

V. POLICY: It is the policy of the Department of Correction to ensure that an execution is carried out as mandated for an inmate sentenced to the death penalty (ISDP). It is the intent to make the execution as easy as possible for both the inmate and persons tasked with carrying out the execution.

A. References:

1. Department of Correction Execution Policy.
2. Bureau of Prisons Execution Procedure.
3. 11 Delaware Code; 4209 (f).
4. 24 Delaware Code; 1760.
5. 29 Delaware Code; 4706.